

British Columbia Ferry Commission



Annual Report for the Fiscal Year Ending March 31, 2012

*Prepared and submitted in accordance with
Section 53 of the Coastal Ferry Act
of the Province of British Columbia*

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August 31st 2012



To the Lieutenant Governor in Council

Victoria, BC
August 31st 2012

May It Please Your Honour:

**BC Ferry Commission Annual Report
For the Fiscal Year Ending March 31, 2012**

I am pleased to submit to you the ninth Annual Report of the BC Ferries Commissioner.

As required by section 53 of the Coastal Ferry Act, this Annual Report sets out briefly all applications and requests for decisions to the Commissioner under the Act, all orders issued by the Commissioner, the financial statements applicable to the Office of the Commissioner and the opinions of the Commissioner as to whether the BC Ferry Authority and the ferry operator have performed their respective obligations under the Act, and, in the case of the ferry operator, whether it has also performed its obligations under the Coastal Ferry Services Contract.

Yours truly,

A handwritten signature in black ink, appearing to read "Gord Macatee".

Gord Macatee
BC Ferries Commissioner

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1 Message from the Commissioners

This is the ninth annual report of the commissioners and has been prepared in accordance with Section 53 of the Coastal Ferry Act (the “Act”). The report covers all major decisions, orders and reports issued by the commissioners during the fiscal year ended March 31, 2012 (“FY 2012”) and the financial statements of the Office of the Commissioner. The report also provides the commissioners’ opinions on the performance of British Columbia Ferry Services Inc. (“BC Ferries” or “the ferry operator”) relative to its obligations under the Act and the Coastal Ferry Services Contract and also the performance of the BC Ferry Authority relative to its statutory obligations under the Act.

Notwithstanding the normal regulatory responsibilities carried out by the commissioners, the most significant activity during FY 2012 was the review conducted by the commissioners of the Act as mandated by Bill 14 which was passed on May 24, 2011.

Under Bill 14, the commissioner was to conduct a review of the Act and within six months submit recommendations to the Minister of Transportation and Infrastructure for possible changes which would better enable the balancing of the interests of ferry users and the financial sustainability of the ferry operator. The review was a result of concerns raised by ferry users and coastal communities regarding the preliminary price caps for the next performance term from April 1, 2012 to March 31, 2016. The preliminary price caps were published on March 31, 2011 as required under the Act and full details were reported in our annual report for the fiscal year ended March 31, 2011. The overwhelming concern was affordability and the negative impact on coastal communities of substantial price cap increases over the next performance term commencing on April 1, 2012 and ending on March 31, 2016.

The commissioner’s report was submitted to the Minister of Transportation and Infrastructure on January 24, 2012.

Subsequently the Act was amended by Bill 47 which incorporated many of the recommendations by the commissioner in his report. The amendments to the Act under Bill 47 came into force on June 25, 2012.

The past fiscal year was a year of transition with Martin Crilly completing his term on April 30, 2011 after more than eight years as the first commissioner and Gordon Macatee assuming his appointment as the new commissioner on May 1, 2011.

Applications and Requests for Decisions, Orders and Reports

The following were the major decisions, orders and reports of the commissioners during FY 2012:

Order 11.01B – October 31, 2011

Under section 45.1 of the Act, BC Ferries requested reconsideration and a variance of the quarterly application of the minimum allowed average tariff (MAAT) in connection with its drop trailer business. The commissioner declined the request as conditions did not exist to warrant reconsideration. Also an appeal of the commissioner's original decision was pending so it was premature for a reconsideration to take place on only one aspect of the MAAT.

Order 11.03 – October 22, 2011

Upon request from BC Ferries, the commissioner authorized a revised methodology for the calculation of weighted average fares for purposes of comparing with the price caps.

Order 12.01 – January 4, 2012

Under section 43 of the Act, BC Ferries applied for a variation of service on Route 30 due to the damaged berth at Duke Point which required extensive repairs over several months. In view of the extraordinary situation and the temporary closure of the Duke Point Terminal, the commissioner authorized the variation of service permitting route 30 to operate to Departure Bay Terminal while Duke Point was being repaired.

Review of the Coastal Ferry Act – January 24, 2012

Under Bill 14, the commissioner was mandated by the Province of BC to conduct a review (the "Review") of the Act as it relates to the regulation of ferry operators. The objective of the Review was to recommend to the Minister of

Transportation and Infrastructure changes to the Act which will better enable the commissioner to balance the interests of ferry users with the financial sustainability of ferry operators.

The commissioner adopted a holistic approach to conducting the Review. The approach taken had the following main elements:

- A comprehensive public consultation process which included public meetings in coastal communities and written submissions.
- The posting of several relevant discussion papers on the commissioner's website for public comments.
- A review of other price cap regulatory models and ferry systems elsewhere in the world, focusing on the UK, Scandinavia and the US.

In their [report](#), the commissioners provided recommendations for changes to the Act and other measures to improve the current regulatory model. The proposed changes and measures were intended to achieve the key objectives of affordability, accountability and financial sustainability of the ferry system.

In undertaking this review, the commissioner and deputy commissioner conducted a comprehensive public consultation process, including 40 meetings in 27 communities, involving approximately 2,000 people. The public was also invited to comment on nine topics on the BC Ferry Commission's website, and meetings were held with BC Ferries, First Nations, municipal councils, chambers of commerce, tourism organizations, regional districts and other stakeholders.

As part of the review, PricewaterhouseCoopers LLP researched relevant price cap regulation systems in other parts of the world and other ferry systems in order to compare operating and governance models and the efficiency of BC Ferries. This research found some unique differences in the BC model, and also indicated that BC Ferries generally appears to be relatively efficient and well run.

Performance of BC Ferries and the BC Ferry Authority

Key Findings for FY 2012 on BC Ferries' Performance

- Met or exceeded frequency and capacity of sailings required in the Coastal Ferry Services Contract (CFSC) for each route.
- Delivered 83,790.5 round trips compared to 83,442 required under the CFSC.
- Cancelled 516 scheduled sailings primarily due to weather or mechanical failure but provided 864.5 extra sailings in total.
- Provided capacity to carry the traffic with overall capacity utilization on the designated routes ranging from 20.4% to 72.1%.
- Improved on-time performance to 91.5% system wide, and maintained high levels of reliability and customer satisfaction.
- Traffic declines contributed heavily to a pre-tax return on equity of minus 5.3% compared to the target of plus 13.18%.

The commissioners have carried out detailed analyses and reviews of all quarterly reports from BC Ferries as well as their annual report to the commissioner for the fiscal year ended March 31, 2012. The commissioners have also continuously monitored BC Ferries' operations and received satisfactory responses to all follow-up queries from the commissioners.

Based on our reviews and monitoring, the commissioners are satisfied that *during FY 2012 BC Ferries met all of its obligations under the Coastal Ferry Act and also met all of its obligations under the Coastal Ferry Services Contract (CFSC) with the provincial government. As required under the CFSC, the company provided the core service levels on all regulated routes.* BC Ferries also conducted the annual customer satisfaction survey as required under the CFSC.

In addition, based on the review of its submission to the commissioner and an interview held with the Chair of the Board of Directors, the commissioners are also satisfied that *the BC Ferry Authority performed all of its obligations under the Act during FY 2012.*

Gord Macatee
BC Ferries Commissioner

Sheldon Stoilcn
BC Ferries Deputy
Commissioner

August 31, 2012

2 The Role of the Commission in FY 2012

Regulatory Principles for the BC Ferry Commission

Coastal Ferry Act, s 38

(Prior to Bill 47 amendments which came into force on June 25, 2012)

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- (a) priority is to be placed on the financial sustainability of the ferry operators;
 - (b) ferry operators are to be encouraged to adopt a commercial approach to ferry service delivery;
 - (c) ferry operators are to be encouraged to seek additional or alternative service providers on designated ferry routes through fair and open competitive processes;
 - (d) ferry operators are to be encouraged to minimize expenses without adversely affecting their safe compliance with core ferry services;
 - (e) cross subsidization from major routes to other designated ferry routes is (i) to be eliminated within the first performance term of the first Coastal Ferry Services Contract to be entered into under this Act, and (ii) before its elimination, to be minimized;
 - (f) the designated ferry routes are to move towards a greater reliance on a user pay system so as to reduce, over time, the service fee contributions by the government.

The **BC Ferry Commission** regulates ferry operators under the Coastal Ferry Act of 2003 and as amended by subsequent legislation. The Province appoints the commissioner and up to two deputy commissioners (collectively referred to as the “commissioners”) as statutory officers for six to eight-year terms. They are independent of both the government and of ferry operators. In August 2003, Martin Crilly of Comox was appointed commissioner. His term expired on April 30, 2011. He was replaced by Gord Macatee of Victoria BC on May 1, 2011 who was appointed commissioner for a six-year term expiring on April 30, 2017. In June 2008, Sheldon Stoilen of Bowen Island was appointed deputy commissioner for a six-year term expiring on June 30, 2014.

The commissioners are independent officers of the legislature and may be terminated only for mental infirmity, conviction for an indictable offence under Canada’s criminal code, or a judicial finding of conflict of interest or material breach of duties or obligations. Decisions or orders of the commissioners cannot be appealed, except on a question of law.

The commissioner is not an ombudsperson acting to resolve any private disputes with ferry operators. Further, the commissioner is not responsible for regulating safety or environmental impacts of ferry operations.

Under a long-term contract with the Province, BC Ferries must operate its system to provide defined **minimum core service levels** on each of the 25 routes. On three of them, called **major routes**, which are financially self-sufficient, BC Ferries receives no subsidy. On the other 22, the government pays BC Ferries a **ferry transportation or service fee** per-round trip sailing

Regulation of Ferry Fares

The primary responsibility of the commissioner is to **regulate ferry fares**. The commissioner sets a ceiling or "price cap" on the average level of fares which BC Ferries can charge. The goal in setting the price cap is to balance public interests with the financial sustainability of the ferry operator.

For the second performance term which ended on March 31, 2012, the routes were divided into four geographic groups. Each group had its own price cap. The price caps are reset after every fourth year. Each four-year¹ period is termed a "performance term." In his monitoring of price cap compliance, the commissioner ensures that the weighted average of ferry fares, for each of the route groups, does not rise above the cap for each route group. If it does, the commissioner may order the operator to take corrective action, e.g. reducing fares.

*Regulation of Service**Quantity*

In overseeing the amount or **quantity of service** provided by BC Ferries, the commissioner monitors the adherence of BC Ferries to the terms of its service contract with the Province. The commissioner verifies that the numbers of sailings on each route are, at a minimum, equal to those required in the service contract, subject to an allowance for cancelled sailings for certain reasons (e.g. bad weather). If there is a shortfall in the quantity of service the operator does not receive the service fee.

*Monitoring of Service**Quality*

The commissioner tracks BC Ferries' regular reports of its on-time performance, and the number of "overload" sailings which depart leaving customers behind in the waiting area. The commissioner also reviews the annual customer satisfaction survey methodology which BC Ferries is contractually obligated to carry out using an outside polling firm.

Regulation of Unfair Competitive Advantage

If BC Ferries is operating a business or offering a service where there is external competition, the commissioner has the authority to ensure that BC Ferries does not have an unfair competitive advantage. If the commissioner finds that BC Ferries does have an unfair competitive advantage, the commissioner must order BC Ferries either (1) to provide the service through an Alternate Service Provider, or (2) charge at least a commissioner-specified minimum tariff for the service. By Order 11-01, the commissioner ruled that BC Ferries has an unfair competitive advantage with respect to its drop trailer business and ordered it to charge a commissioner established minimum tariff.

¹ Except for the First Performance Term which was five years ending on March 31, 2008.

Commission Probes

Overall, the commissioner is alert for information, either from its own observations or from the public, suggesting how performance, service quality, efficiency or productivity of ferry operations could be improved. The commissioner may decide to launch a probe on any topic and the ferry operator is legally required to answer the commissioner's questions and comply with any resulting orders.

3 Activity Summary

Commissioner Activities in FY 2012
1. Regulation of Ferry Fares <ul style="list-style-type: none">• confirmed actual fares were within caps during the year
2. Regulation of Service Levels <ul style="list-style-type: none">• confirmed that BC Ferries delivered contracted round-trips under the Coastal Ferry Services Contract
3. Regulation of Unfair Competitive Advantage <ul style="list-style-type: none">• no activity pending appeal of Commission Order 11-01 by Seaspain Ferries Corporation
4. Special Decisions <ul style="list-style-type: none">• no activity regarding major capital deployments; considered opportunities for Alternative Service Providers
5. Enforcement <ul style="list-style-type: none">• monitored BC Ferries overall compliance with and reporting requirements under the Coastal Ferry Act
6. Publication and Outreach <ul style="list-style-type: none">• maintained records, published decisions, and communicated with the public and stakeholders• attended meetings with stakeholder groups
7. Administration and Reporting <ul style="list-style-type: none">• operated an office, obtained support services and consulting advice

The commissioner's activities fall under seven **headings** shown on the left. These headings are taken from the commission's Service Plan and Budget for the year ending March 31, 2012. The core ongoing activities are in headings 1 and 2: the **regulation of fares** through the price cap mechanism, and the **regulation of service levels**. In addition to the quarterly monitoring of price cap compliance, the commissioner was focused for most of the year on the review of the Coastal Ferry Act discussed earlier in this report.

Special decisions under heading 4 include pre-approval of major capital deployments (e.g. new vessels). There were no applications for pre-approval of major capital deployments during the year. This heading also includes consideration of possible opportunities for possible alternate service providers.

Two further activity areas were to keep the public informed about the commissioner's role and activities (under heading 6 - **publication and outreach** and **administration and reporting** requirements under heading 7). During the reporting period, the commission saw a spike in the number of emails and telephone calls received due to two notices that were published in local newspapers in ferry-dependent communities and posted on the commission's website regarding the commission's preliminary price cap decision and review of the Coastal Ferry Act. Almost 600 emails and letters were received during the two public comments periods and a further 142 on other matters.

In July 2011, the commission launched its new website. From its launch to March 31, 2012, there have been over 6,400 visits to the commission's website, of which 59 per cent were new visitors.

4 Average Fare Levels

The table below provides the values of a price cap index compared to an index of actual weighted average fares for each of four route groups in the BC Ferries system in the second performance term (price cap index = 100 at 2003).

The values for the indices are computed by methods laid down in Commission Order 05-01 and Order 11-03 and are based on trailing four-quarter data.

BCFerries									
Average Fare Index Summary									
Route Group		Jun-2010	Sep-2010	Dec-2010	Mar-2011	Jun-2011	Sep-2011	Dec-2011	Mar-2012
Majors									
	Cap	139.18	140.38	141.21	141.94	143.16	144.80	145.87	146.74
	Actual	138.50	140.38	141.21	141.94	142.20	144.39	145.68	146.74
Route 3									
	Cap	155.83	158.64	160.63	162.33	165.14	168.69	171.11	173.22
	Actual	151.12	154.43	155.87	157.01	158.48	160.07	162.00	163.71
Northern									
	Cap	160.16	165.42	166.33	167.09	169.76	175.82	177.34	178.30
	Actual	153.98	160.45	160.33	160.69	162.08	164.43	165.76	166.04
Minors									
	Cap	162.26	165.29	167.27	169.04	171.95	175.82	178.26	180.39
	Actual	160.92	163.20	163.71	164.67	166.20	167.71	169.69	171.57

As provided under the Act, the commissioner allows BC Ferries to exceed the cap (highlighted in yellow) for no more than three consecutive quarters. This ensures that the company does not retain revenues earned at above-price cap levels.

The table shows that BC Ferries did not exceed the price cap for more than three quarters on any route group during FY 2012. Accordingly the company was in compliance with the price caps for the four route groups during the year.

5 Financial Statements

Accounting Services

The Ministry of Justice provides accounting and payment services at no cost to the Ferry Commission. The summary financial statement is based upon the financial information provided by the ministry.

Summary Financial Statement

BC Ferry Commission
Summary Financial Statement
 (in \$ thousands)

	FY 2012	FY 2011	
	Budget	Actual	Actual
Expenditures			
Commissioners' Fees and Expenses	236	137	213
Professional Services and Other	266	145	176
Office Expenses	42	27	21
Total Expenditures	544	309	410

Budgeted Expenditures

The Coastal Ferry Act requires ferry operators to cover the expenses associated with the operation of the office of the commissioner. Under section 59(2) of the Act (prior to Bill 47) the budget for the Office of the Commissioner must not exceed the total of the following:

- (a) for each quarter, if any, of that fiscal year in which the commissioner is to take any action under section 40, 1/20 of 1 per cent of the previous year's tariff revenue;
- (b) for every other quarter of that fiscal year, 1/40 of 1 per cent of the previous year's tariff revenue.

Section 40 of the Act concerns the establishment of price caps for subsequent performance terms. The commission was active under

section 40 during FY 2012 for two quarters and therefore the maximum budget was \$686,000 based on BC Ferries' tariff revenue of \$458 million for FY 2011.

Actual Expenditures

Actual expenditures in FY 2012 were \$309,000, or less than one half of the budget maximum. Expenditures were for commissioners' fees and expenses and for the cost of consultants engaged to assist and advise the commissioners. Expenditures, as budgeted, were substantially higher than the previous year due to anticipated final price cap decision due on September 30, 2011 which was deferred one year by Bill 14 and the ongoing regulation of an unfair competitive advantage for BC Ferries in relation to its drop trailer service. Actual expenditures for FY 2012 do not include the cost of the review of the Coastal Ferry Act conducted by the commissioners during the year. The cost for the review was paid by the Ministry of Transportation and Infrastructure.

*Commissioners'
Remuneration*

The commissioner and deputy commissioner are paid a per-diem fee for their services. Martin Crilly, the commissioner up to April 30, 2011 received \$13,205 in fees during the month of April 2011. Gord Macatee as commissioner from May 1, 2011, received \$62,284 in fees. In addition Mr. Crilly and Mr. Macatee were reimbursed \$171 and \$5,627.31 respectively for travel and miscellaneous expenses incurred during the year. The deputy commissioner received \$48,797 in fees for his services and was reimbursed \$6,817 for travel and other expenses incurred in the period.